

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Lynchburg Division**

In re:

**SUE MIFKA STOTTS,**

Debtor.

Case No. 16-61788

Chapter 13

**CHARLES KABBASH  
t/a 414 Associates,**

Plaintiff,

v.

**SUE MIFKA STOTTS,**

Defendant.

Adversary Proceeding No. \_\_\_\_\_

**COMPLAINT**

Comes now Plaintiff, Charles Kabbash, t/a 414 Associates, by counsel, and respectfully represents unto this Court as follows:

**Parties and Jurisdiction**

1. Charles Kabbash is a natural person over the age of eighteen and a resident of the Western District of Virginia.
2. The Defendant, Sue Mifka Stotts, is a natural person over the age of eighteen and a resident of the Western District of Virginia. She filed a Chapter 13 bankruptcy petition in this

Court on September 7, 2016 and is the Debtor in that proceeding. She will also be referred to as the Debtor in this proceeding.

3. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 157, 28 U.S.C § 1334 and 11 U.S.C. § 523.

4. This adversary proceeding is a core matter.

5. Plaintiff is a secured creditor in the above referenced Chapter 13 bankruptcy proceeding.

6. Pursuant to Fed. R. Bankr. P. 7001(2) an action to determine the extent of a debtor's interest in property is an adversary proceeding.

#### Facts

7. Plaintiff is a secured creditor in the Chapter 13 proceeding. He holds a judgment against Debtor in the amount of \$4,895.00 with interest thereon at the rate of 12% per annum from March 31, 1998. The judgment is secured by a judgment lien against the real property of Debtor located in Louisa County, Virginia and known as 14043 Jefferson Highway, Bumpass, Virginia. The judgment was docketed in the Clerk's Office of the Circuit Court of Louisa County, Virginia on April 16, 1998 in Judgment Lien Book 17 at Page 341. As of October 31, 2016 the balance due on the judgment was \$15,468.20.

8. Debtor and Donald Stotts are co-owned of a parcel of real estate located in Louisa County, Virginia, known as 14043 Jefferson Highway, Bumpass, Virginia (the "Property"). When the Debtor and Donald Stotts purchased the Property on January 2, 1991, they were married and acquired the Property as tenants by the entirety. On December 12, 1996, they were divorced, thus terminating the tenancy by the entirety under Virginia law

and converting the tenancy into a tenancy in common, with each owning an undivided one-half interest.

9. Pursuant to a Contract of Purchase and Sale dated March 2, 2009 (the “Contract”), Donald Stotts agreed to convey his interest in the Property to Debtor upon her “complete payment” of a promissory note in the amount of \$104,000.00 accompanying the transaction.

10. The Debtor defaulted on the promissory note, and Donald Stotts brought suit in Louisa County Circuit Court against the Debtor. On April 8, 2015, the Louisa County Circuit Court entered judgment in favor of Donald Stotts and against the Debtor in the amount of \$59,209.81 with interest thereon at the rate of 6% per year from March 25, 2015.

11. Under Virginia law, once docketed, the judgment created a lien in favor of Donald Stotts against the Debtor’s interest in the Property.

12. A number of other creditors have docketed judgments against the Debtor in the Louisa County Circuit Court resulting in liens in favor of these creditors against the Debtor’s interest in the Property. These liens are set forth in Schedule D accompanying the Debtor’s Chapter 13 petition. The Plaintiff has no independent knowledge of the validity or value of any of these liens.

13. The Property was recently appraised at a value of \$109,000.00. Though the appraisal is dated December 7, 2016, Plaintiff believes that this accurately reflects the value of the Property as of the date of the filing of the Chapter 13 proceeding in this case. The tax assessed value of the Property is \$134,200.00. In her petition, Debtor valued the Property at \$80,000.00.

14. Debtor's amended Chapter 13 plan proposes to "Cram Down" the value of Plaintiff's secured claim to \$5,002.00 with interest at 4% per annum. Plaintiff has filed a proof of claim and an objection to Debtor's plan in the Chapter 13 proceeding.

### **Count I – Valuation of the Property**

15. Plaintiff alleges, based on the recent appraisal, that the fair market value of the Property is \$109,000.00.

### **Count II – Determination of the Debtor's Interest in the Property**

16. Debtor incorrectly asserts in her schedules that she owns only a 50% interest in the Property. After her divorce from Donald Stotts, Debtor owned an undivided one-half interest in the Property. Subsequent to the divorce, Debtor sought and obtained a ruling from the Louisa County Circuit Court in the case of *Donald G. Stotts, Plaintiff v. Sue M. Stotts, Defendant*, Case No. CL15-291, that Donald Stotts is not the "real, beneficial owner of the [P]roperty". The order embodying this ruling was entered on August 3, 2016. The legal effect of this ruling was to make Debtor the owner of 100% of the legal and beneficial interest in the Property.

### **Count III-Determination of Plaintiff's Claim**

17. Plaintiff is a secured creditor.

18. If Debtor owns 100% of the legal and beneficial interest in the Property, then its value is sufficient to pay the claim of Plaintiff in full.

19. Even if Debtor owns 50% of the legal interest, and 100% of the beneficial interest, in the Property, then its value is still sufficient to pay the claim of Plaintiff in full.

Wherefore Plaintiff prays that the value of the Property be determined to be \$109,000.00, that the legal and beneficial interest of Defendant in the Property be determined to be 100%, that the claim of Plaintiff be allowed in full, without reduction in either principal or interest, and that Plaintiff have such other and further relief as may be necessary in the premises.

**CHARLES KABBASH**

**t/a 414 Associates**

By: Ralph E. Main, Jr.

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Counsel

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